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7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 MICHAEL J. AGUIRRE,

12 Plaintiff,

13 v.

14 UNITED STATES NUCLEAR
REGULATORY COMMISSION, and
15 DOES 1 to 10, inclusive,

16 Defendants.
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Case No. '19CV0495 BAS BLM

**COMPLAINT FOR
DECLARATORY JUDGMENT;
PRODUCTION OF FREEDOM OF
INFORMATION (FOIA) RECORDS**

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

Plaintiff MICHAEL J. AGUIRRE, for his complaint against defendant UNITED STATES NUCLEAR REGULATORY COMMISSION (NRC), alleges as follows:

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel production under a pair of FOIA requests.

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

3. The NRC is a federal agency charged with the duty to continuously inspect nuclear power plants and enforce safety regulations to ensure people and the environment are adequately protected from uses of radioactive material. As a federal agency, the NRC is also charged with the duty to comply with the record production laws under FOIA.

4. One nuclear site the NRC is charged with overseeing is a site that stores nuclear waste in a beach in San Diego, CA. During the site's process for storing nuclear waste, the NRC observed a pattern of ongoing safety violations, including the recent misalignment of a canister storing approximately 100,000 pounds of nuclear waste on 3 August 2018.

5. Since this incident, NRC officials have not appeared before the public in San Diego in an NRC proceeding. The only proceeding the NRC conducted was in Arlington, Texas. The NRC has not held any evidentiary hearing on this matter. It has not placed any witness or decision maker under oath. The NRC delayed disclosure of violations of NRC safety rules related to the ways and means in which the nuclear waste at the San Diego beach site was managed. And now, the NRC wishes to do the same to Plaintiff's two FOIA requests demanding information directly related to the NRC's inspections and observations made during the storing of nuclear waste at the San Diego site.

1 6. On 21 December 2018, Plaintiff first requested production of writings
2 prepared in connection with the NRC Special Inspection Report 050-
3 00206/2018005; 050-00361/2018005; 050-000362/2018005; and 072-00041/2018-
4 001 (Request No. 1). Specifically, Plaintiff requested the writings prepared from the
5 NRC team interview of the licensee and contractor staff “involved or present during
6 the August 3, 2018, misalignment incident.” The NRC assigned an identifier for
7 this request as NRC-2019-000154.

8 7. On 22 December 2018, Plaintiff made a second request for production
9 of writings that showed reports to the NRC as to the discovery of broken shim
10 pin(s) in an empty canister before it was loaded at the nuclear waste site in San
11 Diego in February 2018 (Request No. 2). The NRC assigned an identifier for this
12 request as NRC-2019-000155.

13 8. To date, the NRC has engaged in stonewall tactics and has denied
14 Plaintiff’s request for records without any reasonable justification. The NRC’s
15 actions are inapposite to FOIA’s policy of broad disclosure of government
16 documents and maximum feasible public access to government information.
17 *Church of Scientology v. United States Dep’t of the Army*, 611 F.2d 738 741–42
18 (9th Cir. 1979)

19 9. The United States Supreme Court has recognized FOIA is designed to
20 “pierce the veil of administrative secrecy and to open agency action to the light of
21 public scrutiny.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 361 (1976). Plaintiff
22 requested the records to ensure the storing of nuclear waste in San Diego is open
23 and transparent and the public is kept abreast of the current safety violations.
24 Plaintiff has a right of access to the requested information under 5 U.S.C. §
25 552(a)(3), and the documents Plaintiff requested should be immediately released.

26 **JURISDICTION AND VENUE**

27 10. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this
28 action arises under the laws of the United States, in particular, 5 U.S.C. § 552. This

1 Court also enjoys jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B), under which,
 2 “the district court of the United States in the district in which the complainant
 3 resides, or has his principal place of business... has jurisdiction to enjoin the
 4 agency from withholding agency records and to order the production of any agency
 5 records improperly withheld from the complainant” because, among other things,
 6 Plaintiff lives in this District.

7 11. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B)
 8 and 28 U.S.C. § 1931 because, among other things, Plaintiff’s principal place of
 9 business is in this District.

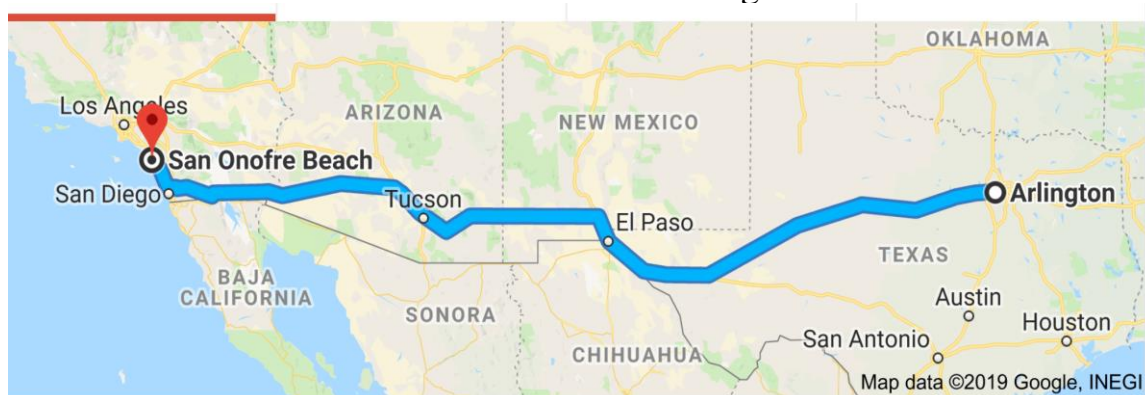
10 PARTIES

11 12. Plaintiff MICHAEL AGUIRRE is a resident of this District and is an
 12 attorney at the law firm AGUIRRE & SEVERSON, which is his principal place of
 13 business at 501 West Broadway, Suite 1050, San Diego, California 92101. Plaintiff
 14 brings this action in his personal capacity as a certified fraud examiner and former
 15 elected official with a strong personal interest in open government that operates
 16 transparently as to its conduct and records.

17 13. Defendant United States Nuclear Regulatory Commission (NRC) has
 18 the records Plaintiff requested.

19 FACTS

20 14. From its regional office in Arlington, Texas, the NRC regulates the
 21 ways and means of three million, eight-hundred thousand (3,800,000) pounds of
 22 nuclear waste that is stored on the beach in San Diego.



1 15. In September 2014, the NRC received several pertinent documents
2 related to the operations of the San Diego nuclear waste site including, an Irradiated
3 Fuel Management Plan (IFMP); Site Specific Decommissioning Cost Estimate
4 (DCE); and Post-Shutdown Decommissioning Activities Report (PSDAR).

5 **A. The Irradiated Fuel Management Plan (IFMP)**

6 16. The IFMP assumed title and possession of the spent fuel at the San
7 Diego nuclear waste site will be transferred to the United States Secretary of
8 Energy for its ultimate disposal in a repository. The IFMP provided for the “initial
9 interim storage” to be “wet storage” in spent fuel pools at the San Diego nuclear
10 site. The spent fuel pools were to be isolated from their normal support systems and
11 those systems replaced by stand-alone cooling and filtration units (also termed a
12 “spent fuel pool island”). Next, under the IFMP, the irradiated fuel in the spent fuel
13 pools was to be transferred to interim “dry storage” at the Common Independent
14 Spent Fuel Storage Installation (ISFSI) also located at the nuclear site in San Diego.

15 17. The IFMP noted there were a total of 3,460 irradiated fuel assemblies
16 at the San Diego nuclear waste site. Seven-hundred ninety-two (792) fuel
17 assemblies had already been transferred to dry storage, and the remaining 2,668
18 irradiated fuel assemblies were to be loaded into Dry Shielded Canisters (DSCs) and
19 transferred to the ISFSI. The IFMP noted there were 18 DSCs storing Unit 1
20 nuclear waste and 33 DSCs storing other spent fuel. The IFMP stated the
21 movement of the irradiated fuel to dry storage would begin in 2017 and would
22 finish in 2019.

23 18. The IFMP also indicated it would procure additional DSCs beginning
24 in 2014, including an additional 47 DSCs for Unit 2 at the San Diego nuclear site,
25 and 44 DCSs for Unit 3 of the site. The spent fuel pool inventory was forecasted to
26 be transferred to dry storage no later than the end of 2019. The IFMP assumed a
27 2024 start for the transfer of spent fuel from the site in San Diego to the Department
28 of Energy. The utility operating the San Diego nuclear site assumed all spent fuel

1 would be removed from the San Diego site as of 2049. Based on this assumption,
2 the utility assumed the spent fuel storage facility in San Diego would be
3 decommissioned by 2051.

4 19. The IFMP provided the cost for 12 additional DSCs to be stored at the
5 San Diego nuclear site. It also provided for ongoing storage of Unit 1 spent fuel at
6 the GE-Hitachi Nuclear America LLC's Morris Operation in Morris, Illinois. The
7 utility also represented, in the IFMP, it was committed to providing consistent and
8 up-to-date information to all of its stakeholders and regulators.

9 20. In the IFMP, the utility operating the San Diego nuclear waste site
10 admitted to the NRC the utility had collected funds from ratepayers in the nuclear
11 decommission trusts for funding Spent Fuel Management.

12 **B. Post-Shutdown Decommissioning Activities Report (PSDAR)**

13 21. The NRC also received the PSDAR in September 2014. In the
14 PSDAR, the utility acknowledged it has the responsibility to restore the San Diego
15 site in accordance with applicable regulations and agreements. The utility also
16 recounted, Unit 1 of the San Diego nuclear site was shut down in 1992 with on-
17 shore facilities largely dismantled by 2009.

18 22. The utility admitted it had a responsibility to its stakeholders and the
19 communities they serve to decommission the San Diego nuclear site in a
20 transparent and effective manner while striving to attain high standards of safety
21 and environmental protection.

22 23. The utility acknowledged the importance of community engagement
23 during the decommissioning process. The utility stressed its commitment to
24 engaging the local community and its leaders in an open, transparent, and proactive
25 manner. The utility represented it was actively engaged with external stakeholders
26 to: understand their priorities; inform them of the utility's plans for the San Diego
27 nuclear site, and to seek the community's input on the safe, timely, and cost-
28 effective decommissioning of the nuclear site. The utility claimed in the PSDAR it

1 was actively engaging with the community through public outreach including
2 briefings for community groups and routine educational updates for local, state, and
3 federal officials.

4 24. The utility reported it had formed the Community Engagement Panel
5 (CEP) and claimed it had members representing a broad range of stakeholder to
6 advise the utility on decommissioning matters. The utility represented CEP
7 members were provided with the opportunity to review and provide input on the
8 PSDAR, the Decommissioning Cost Estimate (DCE) and the IFMP. The utility
9 represented it hosted two workshops with external technical experts to provide the
10 CEP members with a depth of knowledge in these areas to assist CEP members'
11 review of the PSDAR, DCE, and IFMP. The utility also stated it received feedback
12 from the CEP prior to finalization of those documents.

13 25. In the PSDAR, the utility noted the nuclear site was located on the
14 coast of southern California in San Diego County, approximately 62 miles
15 southeast of Los Angeles and 51 miles northwest of San Diego. The San Diego
16 nuclear site is located entirely within the boundaries of the United States Marine
17 Corps Base Camp Pendleton. The site is approximately 4,500 feet long and 800 feet
18 wide, comprising 84 acres. The site area is known as "the Mesa" for other adjacent
19 parcels. The property on which the station is built is subject to an easement from
20 the U. S. Government through the U. S. Navy. The nearest privately-owned land is
21 approximately 2.5 miles from the site.

22 26. The PSDAR provides the storage at the San Diego nuclear site was
23 initiated in 2003 and was subsequently expanded in 2007 to support the currently
24 placed 63 Horizontal Storage Modules in which 51 Dry Storage Containers (DSCs)
25 have been installed to-date: 50 containing irradiated fuel and one (1) containing
26 Greater-Than-Class-C (GTCC) materials.¹ The most recent loading campaign was

27 _____
28 ¹ According to the NRC's website, the NRC has developed a classification system which
categorizes waste as Class A, B, C, or Greater-Than-Class C (GTCC). GTCC has concentrations

1 conducted in 2012. The PSDAR noted the NRC has evaluated the environmental
2 impacts of three general methods for decommissioning power reactor facilities in
3 NUREG-0586, "Final Generic Environmental Impact Statement (GELS) on
4 Decommissioning Nuclear Facilities," Supplement 1. The three general methods
5 are:

6 DECON: The equipment, structures, and portions of the facility and
7 site that contain radioactive contaminants are promptly removed or
8 decontaminated to a level that permits termination of the license after
cessation of operations.

9 SAFSTOR: The facility is placed in a safe stable condition and
10 maintained in that state (safe storage) until it is subsequently
11 decontaminated and dismantled to levels that permit license
12 termination. During SAFSTOR, a facility is left intact or may be
13 partially dismantled, but the fuel has been removed from the reactor
vessel and radioactive liquids have been drained from systems and
components and then processed. Radioactive decay occurs during the
SAFSTOR period, thus reducing the levels of radioactivity in and on
the material and potentially the quantity of radioactive material that
must be disposed of during the decontamination and dismantlement.

14 ENTOMB: Radioactive structures, systems, and components are
15 encased in a structurally long-lived substance such as concrete. The
16 entombed structure is appropriately maintained, and continued
surveillance is carried out until the radioactivity decays to a level that
permits termination of the license.

17 27. The utility operating the San Diego nuclear site reported it chose the
18 DECON method. According to the PSDAR, the utility claimed it is currently in the
19 planning period during which the site is preparing for safe and orderly transition to
20 dismantlement. The utility reported additional ISFSI capacity would be added to
21 meet all of the site's needs and plans to isolate the Spent Fuel Pools (referred to as
22 "islanding") were in development. The utility also reported the San Diego nuclear
23 site would be decontaminated and dismantled (D&D) to levels that permit
24 termination of the NRC licenses and in accordance with the requirements agreed to
25 by the U.S. Navy in the easement for the site. The utility stated it was developing a
26 Termination Plan to be submitted for NRC approval *at least* two years prior to

27 _____
28 of radionuclides that exceed the limits established by the Commission for Class C LLRW. See
<https://www.nrc.gov/waste/llw-disposal/llw-pa/gtcc-transuranic-waste-disposal.html>.

1 termination of the license.

2 28. In the PSDAR, the utility claimed it had benchmarked the experiences
3 of commercial decommissioning projects in the 1990s and 2000s and has sought the
4 input from experienced individuals and groups with a wide range of such
5 experience. The utility represented it maintains close communications with those
6 facilities currently undergoing decommissioning and with many of the
7 organizations supporting those efforts.

8 29. The utility specifically cited the Zion and Humboldt Bay plants as
9 undergoing active decommissioning. The utility stated three other plants
10 (Kewaunee, Crystal River 3, and Vermont Yankee) were or would soon be entering
11 SAFSTOR conditions of varying durations prior to dismantlement. In the PSDAR,
12 the utility also stated there were mature solutions for many of the technical
13 challenges confronting the San Diego nuclear site's decommissioning.

14 30. The NRC received this information as early as September 2014, and
15 the NRC is the organization in charge of ensuring the utility decommissioned the
16 San Diego nuclear site in accordance with the relevant regulations and agreements.

17 **C. Decommissioning Cost-Analysis Waste Disposal**

18 31. The NRC also received a Decommissioning Cost Analysis (DCA) for
19 the San Diego nuclear waste site reporting waste management costs were a
20 significant portion of the decommissioning cost estimate. According to the utility,
21 the following did or would take place. It hired a third-party contractor, Energy
22 Solutions, to estimate the spent fuel waste disposal costs for the San Diego site. The
23 utility claimed regulations governing disposal of radioactive waste are stringent to
24 ensure control of the waste and preclude adverse impact on public health and
25 safety. The utility put the largest spent fuel staffs in place while the fuel pool is
26 operational during the spent fuel cooling period and the fuel assemblies are being
27 transferred to dry storage. After all spent fuel has been removed from the spent fuel
28 pool, the utility will reduce the amount of staff at the site. During spent fuel pool

operations and the dry storage period, the full-time spent fuel management staff will be supplemented with part-time staff to support fuel movements.

32. According to the utility operating the San Diego nuclear waste site, the spent fuel shipping schedules are based in part on the Department of Energy's "Acceptance Priority Ranking & Annual Capacity Report," dated July 2004. The information regarding existing fuel inventory, planned transfers to dry storage and the Department of Energy's projected date of 2024 for acceptance of spent fuel from the San Diego nuclear waste site is based on information provided by the utility. The utility also stated a spent fuel shipping schedule is provided as part of its decommissioning cost estimate (see table below). The utility estimated the total decommissioning cost would be \$1,276,196,000.

Account Total					19.52	\$1,034,230	\$1,078,016	\$2,112,246
Spent Fuel (50.54(bb)) and (72.30)								
SNF Pd 1	Spent Fuel Management Transition	6/7/2013	12/31/2013	0.56	\$63,891	\$66,105	\$129,997	
SNF Pd 2	Spent Fuel Transfer to Dry Storage	1/1/2014	6/1/2019	5.41	\$344,629	\$372,193	\$716,822	
SNF Pd 3	Dry Storage During Decommissioning - Units 1, 2 and 3	6/1/2019	12/5/2031	12.51	\$61,425	\$61,425	\$122,849	
SNF Pd 4	Dry Storage Only - Units 1, 2 and 3	12/5/2031	12/31/2035	4.07	\$29,383	\$29,383	\$58,765	
SNF Pd 5	Dry Storage Only - Units 2 and 3	12/31/2035	12/31/2049	14.00	\$107,326	\$107,326	\$214,653	
SNF D&D Pd 1	ISFSI License Termination	12/31/2049	5/6/2050	0.34	\$1,260	\$1,260	\$2,520	
SNF D&D Pd 2	ISFSI Demolition	5/6/2050	9/8/2051	1.34	\$15,295	\$15,295	\$30,590	
Account Total					38.23	\$623,209	\$652,987	\$1,276,196

D. NRC Observes On-Going Safety Violations at the San Diego Nuclear Waste Site

33. From 22 January 2018 to 31 January 2018, NRC inspectors observed the utility's first nuclear waste Canister Loading Operation on the beach in San Diego. The first nuclear waste canister loaded did not have an NRC-approved shim system to allow airflow to the fuel assemblies within the canister, a violation of NRC safety rules, including 10 CFR 72.146(a). In fact, the first four nuclear waste canisters did not have shims with cutouts needed for thermal heat transfer helium

1 flow.

2 34. During downloading of the nuclear canisters from January to August
3 2018, the bottoms of canisters were frequently getting caught on the shield ring
4 located inside the storage vaults. As of August 2018, 29 canisters, each containing
5 37 nuclear fuel assemblies and each weighing 100,000 pounds, were downloaded.

6 35. On 3 August 2018, a nuclear waste canister during downloading came
7 to rest on a shield ring inside the storage vault, as shown here:

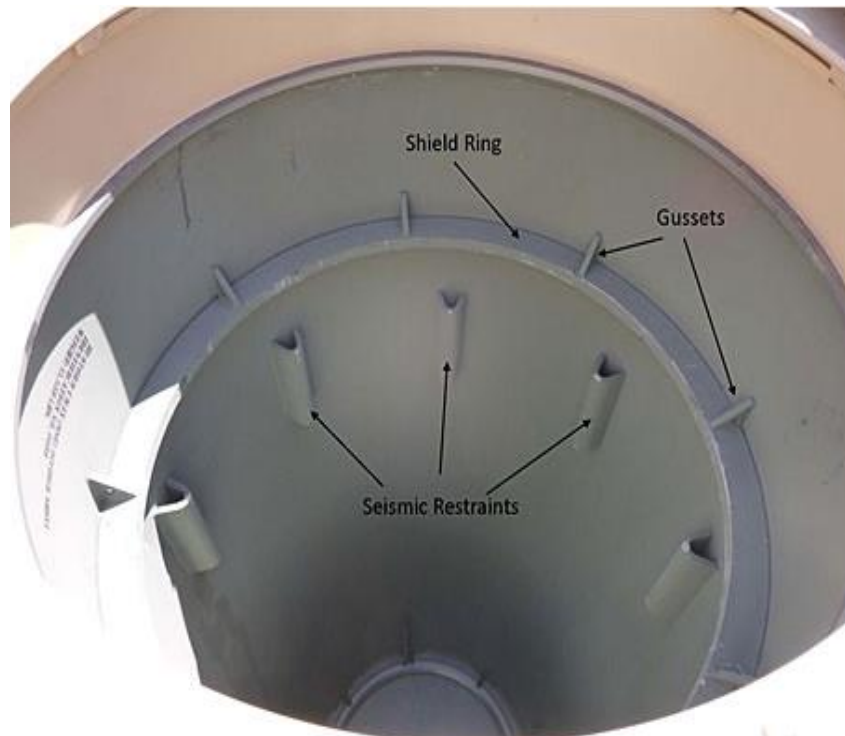


Figure 1 - Divider Shell

21 36. The slings used to lower the canister were completely bunched up on
22 the ground—supporting no part of the canister load. If that multi-purpose canister
23 (MPC) had slipped, or the canister had slipped somehow because of vibration, or
24 some other mechanism during that time, those slings, in the completely slack and
25 bunched-up position, were in no condition to capture and arrest that drop. That
26 MPC, containing 100,000 pounds of spent fuel, would have dropped to the bottom
27 of that canister with no slings being enabled.

28 ///

1 37. On 22 July 2018, there was an abnormal delay in a canister
2 downloading operation. What should have taken 15 minutes to download a
3 canister, ended up taking an hour and a half (90 minutes) because the nuclear waste
4 canister was not properly aligned for downloading for over an hour and a half. This
5 event was not recorded as part of the required corrective action program. There was
6 no communication, no operational experience passed on to make sure workers
7 learned from what happened on 22 July 2018.

8 38. During downloading operations (January 2018 to August 2018) the
9 nuclear waste station frequently experienced the bottoms of canisters getting caught
10 on the shield ring. Those responsible and in charge never identified the
11 misalignments as conditions adverse to quality, consequently, those responsible and
12 in charge never implemented actions that would have prevented the August 3rd
13 event.

14 39. Additionally, during downloading operations (January 2018 to August
15 2018) there were numerous deficiencies in training and supervision of the
16 downloading of nuclear waste at the San Diego beach site. There were also
17 numerous instances of failures to make required notifications of safety rule
18 violations.

19 40. Management of the nuclear waste at the San Diego beach site was
20 outsourced to Holtec International (Holtec), a corporation organized under the laws
21 of the state of Delaware, with its principal place of business at 555 Lincoln Drive
22 West, Marlton, New Jersey—2,804 miles from the San Diego beach nuclear waste
23 site, as shown here:

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41. Holtec, in turn, delegated management of the nuclear waste at the San Diego beach site to Williams Industrial Services Group (Williams) and Sonic Systems International (Sonic). Williams surrendered its right to do intrastate business in California on 1 December 2005. Sonic is a privately-owned corporation.

42. Williams' principal place of business is Chamblee, Georgia—2,203 miles from the San Diego nuclear waste beach site, as shown here:



43. Sonic's principal place of business is Houston, Texas—1,516 miles from the San Diego nuclear waste beach site as shown here:



44. NRC conducted several Special Inspection Reports at the San Diego nuclear waste site, including the 3 August 2019, the day of the misalignment

1 incident. However, NRC officials have not appeared before the public in San Diego
 2 in an NRC proceeding. The only proceeding the NRC conducted was at Arlington,
 3 Texas. The NRC has not held any evidentiary hearing on this matter. It has not
 4 placed any witness or decision maker under oath. The NRC officials have delayed
 5 disclosure of violations of NRC safety rules related to the ways and means in which
 6 the nuclear waste at the San Diego beach site was managed.

7 **STANDARD OF JUDICIAL REVIEW IN FOIA CASES**

8 45. FOIA provides a statutory basis for citizens to request documents from
 9 the federal governments and its various departments, agencies and/or officers. *See*
 10 *generally* 5 U.S.C. § 552 *et seq.* The overriding purpose of FOIA is to “mandate
 11 policy of broad disclosure of government documents” and maximum feasible public
 12 access to government information. *Powell v. U.S. Dept. of Justice*, 569 F. Supp.
 13 1192, 1197 (N.D. Cal. 1983) (citing *Church of Scientology v. United States Dep’t of*
 14 *the Army*, 611 F.2d 738 741–42 (9th Cir. 1979)).

15 46. The U.S. Supreme Court has long recognized that Congress’ intent in
 16 enacting FOIA was to implement “a general philosophy of full agency disclosure.”
 17 *United States Dep’t of Justice v. Reports Comm. for Freedom of the Press*, 489 U.S.
 18 749, 754 (1989). The Supreme Court has explained that, without question, the Act
 19 is broadly conceived. It seeks to permit access to official information long-shielded
 20 unnecessarily from public view and attempts to create a judicially enforceable
 21 public right to secure such information from possibly unwilling official hands. *EPA*
 22 *v. Mink*, 410 U.S. 73, 80 (1973).

23 47. The Supreme Court has also stated that FOIA is designed to “pierce
 24 the veil of administrative secrecy and to open agency action to the light of public
 25 scrutiny.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 361 (1976). The basic
 26 purpose of FOIA “is to ensure an informed citizenry, vital to the functioning of a
 27 democratic society, needed to check against corruption and to hold the governors
 28 accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214,

1 242 (1978).

2 48. A district court's review of a government agency's decision to
3 withhold documents requested under FOIA is *de novo*, and the burden is on the
4 agency to justify its actions of nondisclosure. *See* 5 U.S.C. § 552(a)(4)(B);
5 *Kreindler v. Department of Navy*, 363 F.Supp 611, 613 (D.C.N.Y. 1973). In FOIA
6 cases, the government bears the burden of establishing that any exemption from
7 disclosure applies. 5 U.S.C. § 552(a)(4)(B); *Ortiz v. U.S. Dep't of Health and*
8 *Human Services*, 70 F.3d 729, 732 (2nd Cir. 1995), *certiorari denied* 517 U.S. 1136
9 (1996). Courts must construe FOIA's statutory exemptions narrowly and in favor of
10 disclosure. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989).

11 **A. Plaintiff's Freedom of Information Act (FOIA) Requests**

12 49. On 21 December 2018, Plaintiff first requested production of writings
13 prepared in connection with the NRC Special Inspection Report 050-
14 00206/2018005; 050-00361/2018005; 050-000362/2018005; and 072-00041/2018-
15 001 (Request No. 1). Specifically, Plaintiff requested the writings prepared from the
16 NRC team interview of the licensee and contractor staff "involved or present during
17 the August 3, 2018, misalignment incident" at the San Diego nuclear waste site.

18 50. Plaintiff made an additional request on 22 December 2018, seeking
19 production of writings that showed reports to the NRC as to the discovery of broken
20 shim pin(s) in an empty canister before it was loaded at the nuclear waste site in
21 San Diego in February 2018 (Request No. 2).

22 51. Over a month later, on 29 January 2019, the NRC admitted delay in
23 responding to plaintiffs FOIA requests. On 29 January 2019, an NRC official e-
24 mailed Plaintiff stating, "My apologies for the delay in responding to your FOIA
25 Requests," and assigned Plaintiff identifiers for these two requests: NRC-2019-
26 000154 (Request No. 1) and NRC-2019-000155 (Request No. 2):

27 **NRC-2019-000154** Writings prepared in connection with NRC
28 Special Inspection Report 050-00206/2018005; 050-00361/2018005;
050-00362/2018005; and 072-00041/2018-001

1 **NRC-2019-000155** Any writings showing [] reported to the
2 Nuclear Regulatory Commission, ...discovery of broken shim pin(s) in
3 an empty canister before it was loaded at the ...Independent Spent
4 Fuel Storage Installation (ISFSI) in February 2018

5 52. Although the NRC clearly summarized Plaintiff's requests and the
6 documents are likely readily available to the NRC, no writings have been produced.
7 Instead of providing any documents, the NRC stalled its response on the pretext
8 that it needed to "verify the \$1500 fee limit specified in your request to ensure that
9 this was not an error." Despite clearly acknowledging the \$1500 fee limit in both of
10 Plaintiff's original requests, Plaintiff again confirmed the \$1500 fee.

11 53. On 30 January 2019, the NRC formally responded to Plaintiff's
12 request and estimated the records would be disclosed by February 28, 2019 -- over
13 two months from the original date of Plaintiff's requests.

14 54. Given the ongoing and pattern of serious safety violations at the San
15 Diego nuclear waste beach site, Plaintiff asked the NRC to expedite the records
16 request because those operating the waste site may resume downloading the
17 canisters without correcting the pattern of safety violations already identified by the
18 NRC. The NRC denied Plaintiff's request for expedited processing on 14 February
19 2019, and consolidated his requests into a single appeal (NRC-2019-000201).

20 55. On 22 February 2019, the NRC summarily denied Plaintiff's appeal
21 stating although the Plaintiff agreed to pay up to \$1500 in both cases, Plaintiff
22 needed to also make an "advanced payment" and therefore the NRC would not
23 proceed with his request. The NRC also stated Plaintiff had not clarified which
24 specific category of records Plaintiff was seeking, and therefore there was no basis
25 to appeal and the appeal was considered moot. Yet, Plaintiff agreed to make
26 payment, and the category of records was clear. Given the recency of the
27 underlying investigation of issues at the waste site, the NRC demand was a mere
28 pretext for noncompliance with FOIA.

///

56. To date, the NRC has failed to provide any of the records identified in Plaintiffs two records requests.

B. Public Interest in Disclosure of Documents Requested Under FOIA

57. The information requested under FOIA would inform the public about NRC violations of public trust involving the threat to public health and safety and the general welfare of over eight million people living in and around the nuclear waste stored at the San Diego beach site. There is an obvious public interest in a full and thorough airing of serious abuses that did in fact occur at the San Diego nuclear waste site, in the hope that such abuses will not occur in the future. The information sought will expose any collusion between the NRC and the entities it is supposed to regulate. The information sought will show whether the NRC has conducted enough oversight to protect the public health, safety and welfare.

C. Exhaustion of Administrative Remedy is Futile

58. The NRC denied Plaintiff's request for expedited processing and then summarily denied Plaintiff's appeal. Based on the failure to produce records, summary denials, and dilatory tactics of the NRC, Plaintiff has exhausted all his administrative remedies under 5 U.S.C. § 552(a)(6)(A)(ii).

59. Further, any other exhaustion of administrative remedies would be inadequate and futile. Time is of the essence because millions of people living in the counties surrounding the site will be in danger of serious safety and health concerns if those operating the waste site resume downloading the canisters without correcting the problems already created and identified in the NRC proceedings.

FIRST CAUSE OF ACTION

DECLARATORY JUDGMENT

60. The allegations made in the paragraphs above are fully alleged here by reference.

61. FOIA instructs the federal government, including the NRC, to publicly release the requested records.

1 62. The NRC has not provided the requested records to Plaintiff.

2 63. Plaintiff seeks declaratory judgment that the NRC produce Plaintiff's
3 requested records immediately pursuant to FOIA.

4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF FOIA**

6 64. The allegations made in the paragraphs above are fully alleged here by
7 reference.

8 65. Plaintiff seeks that the NRC release the requested records.

9 66. Plaintiff has exhausted its administrative remedies and has received
10 none of the records requested.

11 67. FOIA instructs the federal government, including the NRC, to publicly
12 release the requested records.

13 68. Upon substantially prevailing, Plaintiff should be awarded his
14 attorneys' fees under 5 U.S.C. § 552(a)(4)(E).

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff respectfully prays that:

17 1. The Court declare that the NRC's failure to respond to Plaintiff's
18 requested documents was unlawful;

19 2. The Court order the NRC to make Plaintiff's requested records
20 released to Plaintiff;

21 3. The Court order the NRC to award attorney's fees to Plaintiff pursuant
22 to 5 U.S.C. § 552(a)(4)(E); and

23 4. The Court grant such other and further relief as this Court may deem
24 just and proper.

25 Respectfully submitted,

26 AGUIRRE & SEVERSON, LLP

27 Dated: March 14, 2019

28 /s/Maria C. Severson
 Maria C. Severson, Esq.,
 Attorney for Plaintiff